

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MEMORANDUM AND ORDER

MURPHY, District Judge:

This matter comes before the Court for case management. By Order dated August 7, 2013, the Court dismissed Plaintiff's complaint and Counts 1 and 2 of the action, but gave him leave to file an amended complaint by September 11, 2013 if he wished to further pursue his claim in Count 3 for failure to provide medical treatment in the St. Clair County Jail (Doc. 9). The envelope containing that Order was returned as undeliverable on August 21, 2013 (Doc. 11). However, Plaintiff provided his new address to the Clerk on August 26, 2013, and obtained a copy of the Order at Doc. 9 on that date. Thus, Plaintiff was warned that if he failed to submit an amended complaint by September 11, his case would be dismissed with prejudice. That deadline has now passed, and Plaintiff has not filed an amended complaint.

IT IS THEREFORE ORDERED that this action is **DISMISSED** with prejudice for failure to state a claim upon which relief may be granted. The Court previously dismissed Count 1 with prejudice, and dismissed Count 2 without prejudice (*See* Doc. 9). **COUNT 3** is now

DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted. All pending motions are **DENIED AS MOOT**.

The dismissal of this action shall count as one of Plaintiff's three allotted "strikes" within the meaning of 28 U.S.C. § 1915(g). Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$350.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If Plaintiff wishes to appeal this dismissal, he may file a notice of appeal with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* should set forth the issues Plaintiff plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$455.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another "strike." A timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4).

The Clerk shall **CLOSE THIS CASE** and enter judgment accordingly.

IT IS SO ORDERED.

DATED: October 7, 2013

s/ G. Patrick Murphy
G. PATRICK MURPHY
United States District Judge